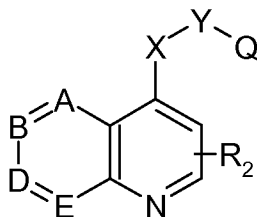


REMARKS

The present Amendment responds to the Office Action dated September 7, 2007 having a shortened statutory period for response set to expire December 7, 2007. Filed concurrently herewith is a request for a three (3) month extension of time to respond, making the present Amendment due by March 7, 2008.

In the Office Action, claims 1-16 are pending, with claim 14 withdrawn from consideration pursuant to the Examiner's Restriction Requirement, which has been made final. Examined claims 1-13, 15, and 16 have been rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,821,244 to Schaper et al. (the "244 Patent"). Applicants respectfully disagree with the Examiner's position and request that the rejection of the claims be reconsidered in view of the arguments set forth below.

As the Examiner highlights in the Office Action, the '244 Patent teaches a compound of the Formula (Ic)

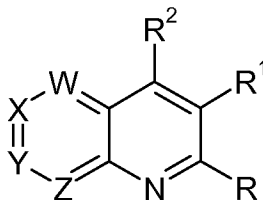


Col. 1, Ins. 30-35. With respect to the radicals and groups of Formula (Ic), the '244 Patent specifically teaches:

Two of the symbols A, B, D and E are in each case CR¹ and the remaining two symbols are in each case CH or in each case nitrogen,

(Col. 1, Ins. 63-65). Accordingly, with respect to groups A, B, D and E, Formula (Ic) is specifically limited to a maximum number of two nitrogens.

The claims of the present invention, on the other hand, are directed to a compound having the general formula



wherein W, Z and one of X and Y are N and the other one of X and Y is CR⁸. Accordingly, with respect to groups W, Z, X, and Y, there will always be at least three nitrogen atoms, such that there is a 1,2,4-triazine fused to the pyridine ring.

The Examiner freely concedes that the '244 Patent limits the number of nitrogens substituted for groups A, B, D and E in Formula (Ic). More particularly, the Examiner acknowledges "Schaper differs from instant claims in not permitting pyridine-1,2,4-triazine by limiting choices of A, B, D and E to include maximum of two nitrogens." (OA, p. 4) (emphasis added). Despite the fact that the '244 Patent does "not permit" a 1,2,4-triazine fused to the pyridine ring, the Examiner takes the position that one of skill in the art would be motivated by the reference to arrive at Applicants' claimed invention. Since the patent does "not permit" the formation of a 1,2,4-triazine fused to the pyridine ring, then how can it be argued that one of ordinary skill in the art would be motivated to form one and arrive at Applicants' claimed invention?

Applicants submit, first, that the '244 Patent teaches away from a compound wherein the A, B, D, E cycle has more than two nitrogens. Rather, the '244 Patent clearly requires that two of the symbols on the A, B, D, E cycle be CR¹. Indeed, of all the substituents that can be varied on the entire formula (Ic), Applicants' argue that modifications to the A, B, D, E cycle are clearly limited by the rule that two of the symbols be CR¹. Accordingly, one of ordinary skill in the art would not be motivated to modify this part of the overall formula if attempting to find other compounds with acceptable fungicidal activity. Applicants further submit that, in the face of this mandate, one of ordinary skill in the art would arguably conclude that a ring modified to have less than two CR¹ values, would lead to compounds that are unsatisfactory for their intended purpose.

Based on the foregoing reasons, then, Applicants respectfully submit that the claimed invention, which requires that three nitrogens be position on the W, X, Y, Z cycle is not obvious in view of the '244 Patent. As such, Applicants believe that the requisite motivation to establish a *prima facie* case cannot conceivably be derived from the '244 Patent. Rather, a conclusion that Applicants' claimed invention is obvious, based solely upon the disclosure of the '244 Patent, can only be found upon hindsight reasoning, which is impermissible in establishing a *prima facie* case of obviousness. As such, Applicants respectfully request that the Examiner withdraw the § 103(a) rejection of all pending claims.

Finally, the Examiner will note that new claim 17, which depends from claim 1, has been added to the application. Claim 17 is directed to a compound of formula 1 wherein:

W, Y, and Z are each N;

R¹ is 2,4,6-trifluorophenyl group; and

R² is NR³R⁴.

With respect to the values of R³R⁴, Applicants have excluded substitution thereof by a cycloalkyl group. In addition to the foregoing arguments, new claim 17 is not obvious in view of the teachings

of the '244 Patent because when substituent X of formula (Ic) of the '244 Patent is nitrogen, the nitrogen is always substituted by Q, which is a cycloalkyl group. In addition, the presence of the 2,4,6-trifluorophenyl group further removes the claimed structure from the compounds disclosed in the '244 Patent.

Applicants submit that claim 17 does not add new matter and is clearly supported by the presently filed specification. For example, Table 136 on pages 81-83 shows specific compounds falling under the general formula of claim 17 such as compounds 3(11), 3(16), 3(26), 12(26), 23(26), 58(26).

Based upon the foregoing then, Applicants submit that the pending claims are in condition for allowance and the Examiner is courteously solicited to pass this application on to allowance. No other fees are believed to be payable at this time. However, the Commissioner is authorized to debit any applicable fees from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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